

Matthew Borden, admitted *pro hac vice*
borden@braunhagey.com

J. Noah Hagey, admitted *pro hac vice*
hagey@braunhagey.com

Athul K. Acharya, OSB No. 152436
acharya@braunhagey.com

Gunnar K. Martz, admitted *pro hac vice*
martz@braunhagey.com

BRAUNHAGEY & BORDEN LLP
351 California Street, Tenth Floor
San Francisco, CA 94104
Telephone: (415) 599-0210

Kelly K. Simon, OSB No. 154213
ksimon@aclu-or.org

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF OREGON
P.O. Box 40585
Portland, OR 97240
Telephone: (503) 227-6928

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

INDEX NEWSPAPERS LLC, a Washington limited-liability company, dba **PORTLAND MERCURY**; **DOUG BROWN**; **BRIAN CONLEY**; **SAM GEHRKE**; **MATHIEU LEWIS-ROLLAND**; **KAT MAHONEY**; **SERGIO OLMOS**; **JOHN RUDOFF**; **ALEX MILAN TRACY**; **TUCK WOODSTOCK**; **JUSTIN YAU**; and those similarly situated,

Plaintiffs,

v.

CITY OF PORTLAND, a municipal corporation; **JOHN DOES 1-60**, officers of Portland Police Bureau and other agencies working in concert; **U.S. DEPARTMENT OF HOMELAND SECURITY**; and **U.S. MARSHALS SERVICE**,

Defendants.

Case No. 3:20-cv-1035-SI

DECLARATION OF MATTHEW BORDEN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AGAINST FEDERAL DEFENDANTS

I, Matthew Borden, declare:

1. I am counsel of record for the Plaintiffs and have been admitted *pro hac vice* to practice before the Court in this matter. I make this declaration based on personal knowledge. If called as a witness, I could and would testify competently to the facts below.

2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts of the transcript from the deposition of Gabriel Russell, dated August 4, 2020.

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts of the transcript from the deposition of Federal Protective Services Officer Badge 824, dated August 5, 2020.

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of the transcript from the deposition of Customs and Border Protection Officer NZ-1, dated August 6, 2020.

5. Plaintiffs also met and conferred with counsel for the federal agents on August 9 to explore the possibility of a mutually acceptable compromise regarding identification of federal agents, but the federal agents were unwilling to agree to any suggestion made by Plaintiffs thus far and did not have any new suggestions of their own.

I declare under penalty of perjury under the laws of United States of America that the foregoing is true and correct.

Dated: August 9, 2020

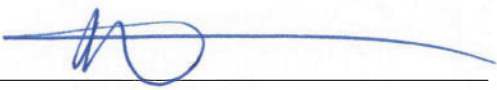

Matthew Borden

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

INDEX NEWSPAPERS LLC,

et al.,

Plaintiffs,

v.

No. 3:20-cv-01035-SI

CITY OF PORTLAND, et al.,

Defendants.

VIDEO DEPOSITION OF GABRIEL RUSSELL

Taken in behalf of Plaintiffs

Tuesday, August 4, 2020

Reported by: Marilyn Hoover, RPR

Oregon CSR No. 04-0387

1 BE IT REMEMBERED THAT, pursuant to the Federal
2 Rules of Civil Procedure, the deposition of GABRIEL
3 RUSSELL was taken via Zoom video before Marilyn
4 Hoover, Oregon CSR No. 04-0387; on Tuesday, August
5 4, 2020, commencing at the hour of 11:13 a.m.; the
6 witness testifying from Auburn, Washington.

7

8 APPEARANCES

9 BRAUNHAGEY & BORDEN LLP

10 BY MR. ATHUL K. ACHARYA

11 MR. GUNNAR K. MARTZ

12 351 California Street, 10th Floor

13 San Francisco, California 94104

14 Telephone: 415-963-4493

15 E-mail: Acharya@braunhagey.com

16 On behalf of Plaintiffs

17

18 UNITED STATES DEPARTMENT OF JUSTICE

19 BY MR. JOSHUA E. GARDNER

20 20 Massachusetts Avenue N.W., Room 6106

21 Washington, D.C. 20530

22 Telephone: 205-305-7583

23 E-mail: Joshua.E.Gardner@usdoj.gov

24 On behalf of Defendants

25

1 APPEARANCES (CONT.)

2 UNITED STATES DEPARTMENT OF HOMELAND SECURITY

3 BY MS. MICHELLE TONELLI

4 800 N. Capitol Street N.W.

5 Washington, D.C. 20002

6 Telephone: 202-732-8287

7 E-mail: Michelle.Tonelli@dhs.gov

8 On behalf of Defendant DHS

9

10 UNITED STATES DEPARTMENT OF HOMELAND SECURITY

11 FEDERAL PROTECTIVE SERVICE

12 BY MR. FRANK R. LEVI

13 2707 Martin Luther King Jr. Avenue S.E.

14 Washington, D.C. 20528

15 Telephone: 202-732-8113

16 E-mail: Frank.Levi@fps.dhs.gov

17 On behalf of Defendant Federal Protective Service

18

19 ALSO PRESENT: Emily Walter, videographer

20

21

22

23

24

25

1 EXAMINATION INDEX

2 PAGE

3 Examination by Mr. Acharya 6

4

5 * * *

6

7 EXHIBIT INDEX

8 EXHIBIT NO. DESCRIPTION PAGE

9 Exhibit 1 2020-07-29 Russell declaration 27

10 Exhibit 2 2020-07-29 Trump tweet 45

11 Exhibit 3 2020-07-31 Trump tweet 48

12 Exhibit 4 2020-07-31 [105-3] Andrew Smith
13 declaration 5714 Exhibit 5 2020-07-22 [77] Lewis-Rolland
15 declaration 8616 Exhibit 6 2020-07-14 [44] Lewis-Rolland
17 declaration 89

18 Exhibit 7 2020-07-30 Russell declaration 92

19 Exhibit 8 2020-07-28 [94] Mahoney declaration 101

20 Exhibit 9 2020-07-24 RD e-mail 104

21 Exhibit 10 2020-08-03 Portland Protest Exposed 115

22

23

24

25

1 TUESDAY, AUGUST 4, 2020; AUBURN, WASHINGTON

2 THE VIDEOGRAPHER: We are now on the
3 record. Here begins the Zoom videotaped deposition
4 of Gabriel Russell in the matter of Index Newspapers
5 LLC versus City of Portland, in the U.S. District
6 Court, District of Oregon, Portland Division, case
7 number 3:20-cv-01035-SI.

8 Today is August 4th, 2020. The time is
9 11:13. This deposition is being taken over Zoom at
10 the request of BraunHagey & Borden LLP. The
11 videographer is Emily Walter of Magna Legal
12 Services, and the court reporter is Marilynn Hoover
13 of Magna Legal Services. All counsel will be noted
14 on the stenographic record.

15 Will the court reporter please swear in
16 the witness.

17 THE REPORTER: The attorneys participating
18 in this deposition acknowledge that I am not
19 physically present in the deposition room and that I
20 will be swearing in the witness and reporting this
21 deposition remotely. The parties and their counsel
22 consent to this arrangement and waive any objections
23 to this manner of reporting.

24 Please indicate your agreement by stating
25 your name and agreement on the record.

1 MR. ACHARYA: This is Athul Acharya for
2 plaintiffs, and I agree.

3 MR. GARDNER: This is Josh Gardner on
4 behalf of the defendants, and I agree as well.

5 THE REPORTER: Michelle, please.

6 MS. TONELLI: Michelle Tonelli for
7 defendants. I agree as well.

8 GABRIEL RUSSELL,
9 called as a witness, being duly sworn on oath, was
10 examined and did testify as follows:

11 MR. GARDNER: Ms. Hoover, before we begin:
12 The defendants reserve the right to have the witness
13 read and sign.

14 THE REPORTER: So noted.

15 MR. GARDNER: Thank you.

16 THE REPORTER: You may begin, counsel.

17 EXAMINATION

18 BY MR. ACHARYA:

19 Q. Good morning, Officer Russell. How are
20 you today?

21 A. Good. How are you?

22 Q. Doing well. Is it morning where you are?

23 A. It is 11:16 a.m., so it's still morning
24 here.

25 Q. You're -- You're in Portland?

1 A. No. I drove up to Auburn, Washington,
2 early this morning.

3 Q. Okay.

4 A. On-site tech support in Portland, Oregon,
5 so...

6 Q. Is Auburn where you live?

7 A. No.

8 Q. So have you ever been deposed before?

9 A. No.

10 Q. Okay. So I'm just going to give you some
11 sort of ground rules.

12 So I'm going to ask questions, Ms. Hoover
13 and Ms. Walter will record. We'll need you to speak
14 up. No nods or shaking of the head, because those
15 don't make it onto the stenographic record.

16 Can you do that?

17 A. Yes.

18 Q. Also, please don't talk over me, and I'll
19 try not to talk over you. Let's let each other
20 finish so that there's a clean record.

21 Can you do that?

22 A. Yes.

23 Q. Great. So you understand that you are
24 under oath for this deposition?

25 A. Yes.

1 Q. And you understand that that's the same
2 oath as you would take if you were in court?

3 A. Yes.

4 Q. And you understand that this oath means
5 you have to give me the whole truth?

6 A. Yes.

7 Q. Full and complete answers?

8 A. Yes.

9 Q. If you don't understand the question that
10 I ask, please say so, and I will ask a better
11 question.

12 Breaks are fine, but let me finish my line
13 of questioning.

14 Your lawyer's here. He may object to a
15 question, but you still have to answer.

16 Does that all make sense?

17 A. Yes.

18 MR. GARDNER: Unless the government
19 instructs the witness not to answer for an
20 appropriate reason.

21 Q. BY MR. ACHARYA: Correct. If you want to
22 talk to your lawyer, at least answer the pending
23 question, unless the question is about privilege.

24 Will you do that?

25 A. Yes.

1 Q. Great. And if certain documents would
2 help you give your answer, then please tell me that
3 and tell me which documents.

4 A. The only document that I have with me
5 relevant to this is my declaration that everybody
6 has.

7 Q. Great. I just mean if any other documents
8 come up in the course of questioning.

9 A. Very well.

10 Q. Is there any reason -- sickness,
11 medication, anything else -- that you can't give
12 full, complete, and accurate testimony today?

13 A. No.

14 Q. Great. So what did you do to prepare for
15 this deposition?

16 A. I spoke with counsel.

17 Q. Great. What documents have you reviewed
18 in preparation for this deposition?

19 A. I have reviewed my declaration, which I
20 have with me.

21 Q. Great. You have two declarations in this
22 case; is that correct?

23 A. Yes --

24 Q. And you reviewed them both?

25 A. -- I believe so.

1 Q. And you reviewed them both?

2 A. Yes.

3 Q. Okay. So you are the regional director
4 for the Department of Homeland Security Federal
5 Protective Service?

6 A. Yes.

7 Q. Where is your office?

8 A. Auburn, Washington.

9 Q. Do you have any other titles in your
10 position?

11 A. I am currently the commander of the DHS
12 rapid deployment force.

13 Q. For Diligent Valor?

14 A. Yes.

15 Q. And you're also the founder of Takouba
16 Security; is that right?

17 A. I sold my company and it's shut down, so
18 I'm no longer --

19 Q. I see.

20 A. -- involved in that.

21 Q. What -- What was it?

22 A. A consulting company.

23 Q. A security consulting company?

24 A. Security and other things, yes.

25 Q. Just looking at your employment history on

1 LinkedIn, can you tell me what you did from 2012 to
2 2015? I think that's blank there.

3 A. From 2012 until 2015?

4 Q. Yeah.

5 A. I was the regional director for the
6 Federal Protective Service.

7 Q. Okay. So what do you do as the regional
8 director for FPS, normally?

9 A. I supervise law enforcement, physical
10 security, and investigative operations for the
11 Federal Protective Service over the four-state
12 region comprised of Washington, Oregon --

13 (Reporter request.)

14 THE WITNESS: So are we doing the question
15 over again as well, or...

16 Q. BY MR. GARDNER: Well, what do you do as
17 the regional director of FPS?

18 A. I supervise law enforcement, security,
19 physical security, and investigative operations for
20 the Department of Homeland Security's Federal
21 Protective Service for the states of Washington,
22 Oregon, Idaho, and Alaska.

23 Q. And what is FPS's mission?

24 A. We secure almost 9000 GSA owned or leased
25 facilities across the United States.

1 Q. So what are your sort of duties, more
2 specifically, in your current position, normally?

3 A. I am responsible for overseeing and
4 managing, hiring, evaluation, supervision of all the
5 personnel in Region 10; oversight of contracts,
6 assigning work, evaluating subordinate performance,
7 things of that nature.

8 Q. Anything else that comes to mind?

9 A. (No audible response.)

10 Q. And what are your --

11 (Reporter request.)

12 (Record read.)

13 THE WITNESS: It's a -- It's a management
14 -- It's an executive level position that has a lot
15 of responsibilities.

16 Q. BY MR. ACHARYA: Okay. And what are your
17 duties with respect to these protests?

18 A. With regards to protection of federal
19 facilities, I might not --

20 Q. With regard to -- With regard to the
21 protests in downtown generally, whatever the mission
22 may be there.

23 A. My job is to protect federal facilities
24 from being taken over, from being significantly
25 damaged, to protect the federal employees inside

1 them from being killed or assaulted.

2 Q. Your duties are also to ensure that your
3 officers follow the law, applicable standards,
4 procedures, and practices and policies; is that
5 right?

6 MR. GARDNER: Objection; compound.

7 Q. BY MR. ACHARYA: Do you understand the
8 question?

9 A. Could you -- Could you break it up into
10 separate questions, please.

11 Q. Sure. Your job is to also ensure that
12 your officers follow the applicable law; is that
13 right?

14 A. Yes.

15 Q. Also the applicable standards and
16 practices?

17 A. Yes.

18 Q. And any policies?

19 A. Yes.

20 Q. Okay. And your duties include drafting
21 policies?

22 A. Yes.

23 Q. And you've drafted policies on use of
24 force?

25 A. I don't recall that.

1 that's used within FPS for private contracting
2 forces. Is that -- Am I mistaken?

3 A. We -- We have PSOs that are -- that are in
4 Portland as part of their normal duties. They
5 continued to perform their normal duties. They did
6 not have additional, you know, duties that were
7 related to operation Diligent Valor.

8 Q. Understood. And to be clear: PSOs are
9 privately contracted security officers?

10 A. Yes.

11 Q. What companies in Portland?

12 A. I believe the contract in Portland,
13 Oregon, is by a company named MaxSent.

14 Q. M-A-X-E-N-T?

15 A. I'm not sure of the exact spelling.

16 Q. And you command all of the forces sent
17 here as part of Diligent Valor?

18 A. I have tactical control of all of the DHS
19 forces that are -- that are part of operation
20 Diligent Valor.

21 Q. And when you say "tactical control," what
22 do you mean by that?

23 A. That means that I am responsible for just,
24 you know, kind of strategy and tactics for those
25 forces; but I am not responsible for their

1 administrative control, so I don't -- I do not write
2 their evaluations or do discipline for forces that
3 are outside of FPS. I do not, you know, process
4 their paperwork. I'm not responsible for review of
5 their paperwork.

6 Q. So you don't do their discipline?

7 A. Correct.

8 Q. I see. Who does their discipline?

9 A. Each individual component is responsible
10 for their own disciplinary processes.

11 Q. Okay. So you have tactical control over
12 the CBP forces in Diligent Valor?

13 A. Yes.

14 Q. You have tactical control over the ICE
15 forces in Diligent Valor?

16 A. Yes.

17 Q. And you have tactical -- tactical control
18 over the new FPS forces in Diligent Valor?

19 A. Yes.

20 Q. And just to be clear: Do you discipline
21 the new FPS forces in Diligent Valor?

22 MR. GARDNER: Objection; vague. Also
23 objection; lack of foundation.

24 Q. BY MR. ACHARYA: There are new FPS forces
25 that are sent to Portland as part of Diligent Valor?

1 A. I don't know what you mean by "new."

2 Q. In addition to the ones regularly
3 stationed there.

4 A. Yes.

5 Q. And do you -- do you handle the discipline
6 of those forces?

7 A. Typically, they would be returned to their
8 home region to receive discipline if it were
9 necessary.

10 Q. You said "typically." Is there an
11 exception to that?

12 A. Not that I know of.

13 Q. So there are a number of officers whose
14 job it is to -- You understand what I mean when I
15 say "boots on the ground"; right?

16 A. I --

17 MR. GARDNER: Objection; vague.

18 THE WITNESS: No. It's a military term,
19 but I don't think it's appropriate here, and I don't
20 -- I think you should be more specific with your
21 questioning.

22 Q. BY MR. ACHARYA: Great. Do you understand
23 what I mean when I say that there are a number of
24 officers that are patrolling the interior and
25 exterior of the federal properties as part of

1 Q. So what is the mission of Diligent Valor?

2 A. To protect federal buildings, monuments,
3 things of that nature.

4 Q. Was it sent here to quell the protests?

5 A. No.

6 MR. GARDNER: Objection; vague.

7 Q. BY MR. ACHARYA: If someone said Diligent
8 Valor was sent here to quell the protests, they'd be
9 lying; right?

10 MR. GARDNER: Objection; form.

11 Q. BY MR. ACHARYA: Answer the question,
12 please.

13 A. I'm sorry, I couldn't hear Josh's
14 objection.

15 MR. GARDNER: It's objection, form. The
16 form of the question is objectionable.

17 Q. BY MR. ACHARYA: But you still have to
18 answer.

19 So if someone said that Diligent Valor was
20 sent here to quell the protests, they'd be lying;
21 right?

22 A. It would not be -- I mean, I think you're
23 asking me to characterize someone's motivation in
24 answering the question. It's a theoretical
25 question. I don't -- I don't know who would be

1 question.

2 You said you have situations -- seen
3 situations where...

4 A. Where deploying additional forces resulted
5 in enhanced protection, which was the goal of the
6 operation.

7 Q. I see. Is Diligent Valor over?

8 A. It is not.

9 Q. So the extra CBP forces are still here?

10 MR. GARDNER: Objection. To the extent
11 that you can answer counsel's question without
12 divulging information that is subject to the law
13 enforcement privilege, you may do so. To the extent
14 you cannot answer his question without divulging
15 such information, I instruct you not to answer.

16 THE WITNESS: I'm not going to answer that
17 question.

18 Q. BY MR. ACHARYA: Are the extra ICE forces
19 still here?

20 MR. GARDNER: Same objection and same
21 instruction.

22 THE WITNESS: Same answer.

23 Q. BY MR. ACHARYA: When will the extra
24 forces leave?

25 MR. GARDNER: Same objection, same

1 I'm going to put another Donald Trump
2 tweet into the chat. This is going to be Exhibit 3.

3 (Exhibit 3 marked.)

4 Q. BY MR. ACHARYA: And while -- while you've
5 done all that, I'll read it into the record.

6 It says: "Homeland Security is not
7 leaving Portland until local police complete cleanup
8 of anarchists and agitators."

9 Is it accurate to say that DHS's enhanced
10 presence is not leaving Portland until local police
11 complete cleanup of anarchists and agitators?

12 A. Give me a second to -- That's -- That's a
13 hypothetical and I don't...

14 Q. That's not a hypothetical. That's a
15 question about what -- what Homeland Security is
16 going to do.

17 Are they -- Is DHS's enhanced presence
18 leaving Portland -- is not leaving Portland until
19 local police complete cleanup of anarchists and
20 agitators? Is that true?

21 A. I don't know the answer to that.

22 Q. So you don't know when Homeland Security's
23 enhanced presence will leave?

24 A. That's correct.

25 MS. TONELLI: Objection; law enforcement

1 privilege. We're -- We're going into -- it's the
2 same idea of when our officers may withdraw.

3 MR. ACHARYA: Yeah, I think this tweet
4 waives that privilege.

5 MS. TONELLI: No, because you're asking
6 for more detail.

7 MR. GARDNER: Yeah, it does not waive any
8 privilege about the details of due law enforcement
9 efforts in Portland.

10 MR. ACHARYA: That's a -- No, that's the
11 sword and shield situation. If the --

12 MR. GARDNER: It's not a sword and shield
13 at all, sir. We'll have to agree to disagree.

14 Q. BY MR. ACHARYA: Let's talk about
15 coordination of forces.

16 How do you coordinate field operations
17 with the Marshals Service?

18 A. There's a tactical command post at the --
19 at the federal courthouse, where the tactical
20 commanders of DHS and the tactical commanders of the
21 Marshals Service coordinate activities.

22 Q. Do you -- Are you ever in that tactical
23 command post?

24 A. I have been, yes, several times.

25 Q. Are you -- Are you usually in that command

1 action on and around federal property for the
2 protection of federal property and people on it.

3 So if there was, for example, someone who
4 was off a federal property and they were committing
5 assaults against federal officers, using projectiles
6 or something of that nature, federal officers could
7 take enforcement action.

8 Q. Understood. But I'm asking about
9 dispersal orders, which are dispersal orders to
10 unlawful assembly; so we're not talking about any
11 actions against federal officers.

12 Does FPS have authority to enforce a
13 dispersal order against an unlawful assembly on
14 Southwest Fourth Street?

15 A. On Southwest Fourth Street?

16 Q. That's one street west of the federal
17 courthouse.

18 A. Generally, no.

19 Q. So you've policed protests, many protests?

20 A. Yes.

21 Q. Have you personally policed them on the
22 ground?

23 A. Yes.

24 Q. Can you tell me when and where?

25 A. I -- The Federal Protective Service in

1 know, if a protest becomes violent, they have the
2 ability to move protesters -- you know, I don't want
3 to say anywhere they want, but a lot of different
4 areas in the city, while the federal authorities
5 are, you know, required to operate within a
6 reasonable distance of a federal facility. So that
7 just -- So it necessitates different tactics.

8 Q. Sure. Understood.

9 So you're a supervisor. Are you
10 responsible for making sure that the people that you
11 tactically command don't use excessive force?

12 A. Yes.

13 Q. Okay. Do you see what -- what federal
14 agents did to the guy wearing the navy shirt,
15 Christopher David?

16 A. Yes.

17 Q. Did you think that was excessive force?

18 THE WITNESS: Counsel, should I answer
19 this?

20 MR. GARDNER: I mean, if you can do so
21 without disclosing information that is subject to
22 the law enforcement privilege or other privileges,
23 you may. If you need to consult, we can also do
24 that.

25 THE WITNESS: Can we consult briefly?

1 of the incident that I believe you're referring to,
2 and a thorough investigation might reveal
3 information that I don't know of, or other video,
4 but the -- but the video that I saw, it did appear
5 to me to be excessive force.

6 Q. BY MR. ACHARYA: Okay. Did you train
7 those officers to do that?

8 A. The officers involved in that did not --
9 did not work for me, did not answer to me.

10 Q. Who do they work for?

11 A. They don't belong -- I don't believe that
12 they belong to the Department of Homeland Security
13 and were not operating under my tactical control or
14 supervision.

15 Q. Were they part of the United States
16 Marshals Service?

17 A. I've -- I've been told that. I don't -- I
18 don't know that for sure, but I've -- I've been told
19 that.

20 Q. Thank you. So, as a supervisor, you're
21 responsible for making sure that people you're
22 supervising conduct themselves according to the
23 rules; is that correct?

24 A. Yes.

25 Q. Have you read the declarations that we

1 submitted in support of the temporary restraining
2 order?

3 A. Yeah, I believe so.

4 Q. Okay. And you imposed -- And then -- And
5 those declarations all refer to incidents where
6 members of the press were shot or beaten or
7 intimidated.

8 That was your recollection?

9 A. Yes.

10 Q. Okay. And you imposed discipline on the
11 agents involved in every single one of those cases;
12 right?

13 MR. GARDNER: Objection; mischaracterizes
14 the witness's previous testimony.

15 Q. BY MR. ACHARYA: I'm not characterizing
16 your testimony at all. I'm asking if you imposed
17 discipline on the agents involved in every single
18 one of those cases, in the declarations we submitted
19 in support of the TRO.

20 MR. GARDNER: And his previous testimony
21 -- Please.

22 THE WITNESS: I don't know what agents or
23 officers were involved in uses of force against the
24 declarants or even if they weren't injured by other
25 protesters.

1 Q. BY MR. ACHARYA: Okay. So you didn't --
2 In fact, you didn't impose discipline on a single
3 agent for the incidents described in those
4 declarations, did you?

5 A. I don't know what officers or agents were
6 involved in the uses of force that you're referring
7 to.

8 Q. Sure. But, so, ultimately, zero agents
9 were disciplined?

10 A. I don't know --

11 MR. GARDNER: Objection; lack of
12 foundation.

13 Q. BY MR. ACHARYA: Do you know if any agents
14 were disciplined for those uses of force?

15 A. I would have no way of knowing that.
16 There are multiple agencies involved here. There --
17 It is impossible that, you know, one of the other
18 components or agencies has initiated disciplinary --
19 disciplinary proceedings. I have no way of knowing
20 that.

21 Q. Your -- Okay. Did you even try to find
22 out who those agents were?

23 A. I -- What we did was we compared our use
24 of force reporting with the -- you know, with the
25 incidents that were reported; and we did not receive

1 Q. In this operation, you have not used tear
2 gas.

3 So do you do anything to help you identify
4 what FPS agents are at a given location at a given
5 date and time?

6 MR. GARDNER: Objection; vague. Also, I'm
7 not sure I understand the question; but to the
8 extent it's calling for information that would be
9 subject to the law enforcement privilege, I would
10 instruct you not to answer.

11 Maybe you could rephrase it.

12 MR. ACHARYA: Sure.

13 Q. BY MR. ACHARYA: The question is: You
14 know, we have about 30 declarations now of uses of
15 force that are unlawful and in violation of the
16 First Amendment. I think you've said you've read at
17 least the ones submitted in support of the TRO.

18 So my question is: A lot of those talked
19 about a place, a time, a location. Do you have
20 information sufficient to know which agents were
21 present at that place, time, and location?

22 MR. GARDNER: I see. I understand the
23 question now.

24 Objection. Mischaracterizes the documents
25 you're referring to. No further objections.

1 Q. BY MR. ACHARYA: Please answer.

2 A. I believe I already answered that, that I
3 believe it's seven incidents that reported to, and
4 we compared those with our -- with our FPS use of
5 force reports, and we did not find a direct
6 correlation between the complaints and FPS use of
7 force. There may be other agencies involved in the
8 operation, that that used a similar type of analysis
9 and discovered a match.

10 Q. So CBP and ICE uses of force, do you have
11 any ability to look at those?

12 A. No. They have their own computer systems.

13 MR. ACHARYA: So I'm going to put a
14 declaration into the record here. This is the
15 declaration of Mathieu Lewis-Rolland, signed on July
16 22nd, 2020, docket number 77.

17 Tell me when you have it open.

18 THE REPORTER: Marked next in order,
19 counsel?

20 MR. ACHARYA: Sorry. Yeah, next in order.

21 So what was that, Exhibit 5?

22 THE REPORTER: Correct.

23 (Exhibit 5 marked.)

24 THE WITNESS: So where -- I have it. What
25 paragraph are you looking at?

1 Q. BY MR. ACHARYA: Yeah. So I'm looking
2 at -- Well, first off, just have you read this
3 declaration before today?

4 A. I don't believe so.

5 Q. I see. Okay. So if you'd go to page 3,
6 there's a photo of an agent pointing a gun at
7 someone.

8 A. Yes, I see it.

9 Q. Is that agent under your tactical command?

10 A. I don't know that I can...

11 MR. GARDNER: And I would just say,
12 Officer Russell: Take the time you need to read the
13 declaration to the extent it gives you context
14 necessary to answer counsel's question.

15 THE WITNESS: I can't see the -- There's a
16 picture -- There's a patch on the officer's shoulder
17 that's depicted there, and it's not clear enough or
18 large enough for me to identify exactly the agency,
19 but it appears likely to be a U.S. Marshals patch.

20 MR. ACHARYA: I see.

21 THE WITNESS: So I don't --

22 MR. ACHARYA: Understood.

23 THE WITNESS: But I can't -- I don't know
24 if you can read it.

25 MR. ACHARYA: Yeah, it does say U.S.

1 A. Yes.

2 Q. And your policy with respect to
3 journalists and legal observers at protests changed
4 after the TRO?

5 A. I don't know that we -- We didn't write a
6 specific policy. Our policy is to comply with TROs.

7 Q. Sure. Did it change at any point before
8 the TRO?

9 MR. GARDNER: Objection; vague.

10 Q. BY MR. ACHARYA: Did your policy with
11 respect to journalists and legal observers at
12 protests change during the 2020 Portland protests at
13 any time before the TRO?

14 MR. GARDNER: Objection; mischaracterizes
15 the record. You can answer.

16 THE WITNESS: I believe I've already
17 answered that we don't have a specific policy
18 regarding journalists or legal observers.

19 MR. ACHARYA: Okay. And your -- So
20 let's -- I'll put your second declaration into the
21 chat.

22 And so this is declaration of Gabriel
23 Russell -- this is going to be Exhibit 7 --
24 declaration of Gabriel Russell submitted -- or
25 signed on July 30th, 2020. Document number 105-7.

1 (Exhibit 7 marked.)

2 Q. BY MR. ACHARYA: Do you have it open?

3 A. I have a copy here.

4 Q. Okay. Great. And so if you look at
5 paragraph 6, it says that the DHS office of general
6 counsel provided TRO instructions and discussed them
7 at the roll call; correct?

8 A. Yes. It's not exactly the word it says;
9 but it has words to that effect, yes.

10 Q. To that effect. And your agents follow
11 those instructions?

12 A. To the best of my knowledge, yes.

13 Q. And, if they follow those instructions,
14 they won't violate the TRO?

15 A. Generally, yes.

16 Q. And you're in charge of making sure that
17 your agents follow that instruction?

18 A. Yes.

19 Q. That means all Region 10 FPS agents and
20 all agents --

21 (Reporter request.)

22 MR. ACHARYA: Sorry, madam court reporter.

23 Q. BY MR. ACHARYA: I said: You're in charge
24 of making sure that all Region 10 FPS agents and all
25 agents deployed here for Diligent Valor follow those

1 instructions?

2 A. Yes.

3 Q. And you're aware that we moved for
4 contempt, saying that federal agents had violated
5 the TRO?

6 A. Yes.

7 Q. And you would rely on those instructions
8 to figure out if they had in fact violated the TRO?

9 A. To rely on which instructions?

10 Q. The instructions that you discuss in
11 paragraph 6.

12 MR. GARDNER: Objection; mischaracterizes
13 the witness's testimony.

14 THE WITNESS: Can you ask that question
15 again.

16 Q. BY MR. ACHARYA: Sure. So with respect to
17 any allegation that your agents had violated the
18 TRO, you would rely on the policy in paragraph 6,
19 the instructions in paragraph 6, to figure out if
20 they had actually violated the TRO; is that correct?

21 MR. GARDNER: Objection.

22 THE WITNESS: Generally, yes.

23 MR. GARDNER: Go ahead.

24 (Reporter request.)

25 THE WITNESS: Generally, yes.

1 Q. BY MR. ACHARYA: And it is your
2 understanding that, as long as federal agents don't
3 disperse anyone with a press pass, press badge, or a
4 shirt that says "press," they won't violate the TRO?

5 MR. GARDNER: Objection. We're now
6 getting into, I think, a place where you're calling
7 for information subject to the attorney-client
8 privilege; and, at this point, I would instruct the
9 witness not to answer. And, as you know, this is
10 the subject of motions practice before the court.

11 THE WITNESS: I will not answer.

12 Q. BY MR. ACHARYA: Okay. I'm not asking for
13 what the instructions say. I'm asking for your
14 understanding of the TRO.

15 MR. GARDNER: Well, that is not the
16 question you asked. If you want to ask him about
17 what his understanding of the TRO is, ask him that
18 question.

19 MR. ACHARYA: Yeah. Let me -- Let me say
20 it again.

21 Q. BY MR. ACHARYA: Your understanding of the
22 TRO is that, as long as federal agents don't
23 disperse anyone with a press pass, a press badge, or
24 a shirt that says "press," they won't violate the
25 TRO?

1 A. I would have to go back and read the TRO
2 to see if there were other conditions in there,
3 but...

4 Q. Okay. So did we put -- So, yeah, let's go
5 to Exhibit 6. It's tab 13. It's got the 13 in
6 brackets. It's the -- It's the second to last one
7 that I put in the chat, if you see it.

8 A. What's it -- What's it titled?

9 Q. It's titled, brackets, 13, 2020-07-14-44
10 Lewis-Rolland declaration.

11 A. This is the one we looked at previously?

12 Q. It is, yes.

13 A. Yeah. What paragraph do you want me to go
14 to?

15 Q. I'm looking at paragraph -- paragraph 13.

16 A. Okay.

17 Q. And, actually, if you would -- yeah, if
18 you would read paragraph -- yeah, read paragraph
19 13 -- or, actually, I'll just read it into the
20 record.

21 "At 3:10 to 3:11 in the video, around 1:58
22 a.m., I turned so that my right side was facing
23 Agent Doe. At that point, I was shot ten times from
24 Agent Doe's direction. I was hit on my right elbow,
25 the right side of my torso, and my back. The areas

1 where I was shot are all above my waist. At the
2 time I was shot, I was photographing what other
3 officers and protesters were doing. I was not
4 posing any type of threat to Agent Doe or anyone
5 else. I was not even facing him."

6 That's what that paragraph says; correct?

7 A. Correct.

8 Q. Okay. Is it your understanding, as a
9 person in charge of TRO compliance, that shooting a
10 journalist, who's just taking photographs, ten times
11 while he has his back turned -- would that violate
12 the TRO?

13 MR. GARDNER: Objection to the extent it
14 calls for a legal conclusion.

15 THE WITNESS: I'd say that there might be
16 other -- you know, whatever video pictures, that a
17 thorough investigation might be -- you know, might
18 reveal information that would lead me to believe
19 that that was not a violation of the TRO; but it is
20 certainly concerning, the way it's reported there.

21 Q. BY MR. ACHARYA: Thank you. Do you think
22 it would be acceptable conduct if there weren't a
23 TRO?

24 A. It just depends on -- It depends on what
25 the other facts and circumstances of the case.

1 Q. Of course. But, based on the declaration
2 that's in front of you, would that be acceptable
3 conduct, just based on those facts, if there were
4 not a TRO?

5 A. There --

6 MR. GARDNER: Objection. Objection; asked
7 and answered.

8 MR. ACHARYA: No. He answered a different
9 question than I asked.

10 Q. BY MR. ACHARYA: The question I asked was:
11 Just based on the facts that are in front of you,
12 not taking into context the possibility of other
13 facts, would that be acceptable conduct if that
14 weren't a TRO?

15 A. Like I said, there are always other facts
16 and there are always -- That declaration is one
17 person's characterization of a complex and dynamic
18 event. There would -- you know, a thorough
19 investigation might reveal contradictory facts,
20 other video or pictures. That's the type of
21 investigation that would need to be conducted prior
22 to making that determination.

23 Q. Okay. So you cannot say, as you sit here
24 today, that shooting a photographer while he's
25 photographing what other officers and protesters are

1 doing, while he's not posing any type of threat, you
2 can't say that that is unacceptable, absent the TRO?

3 MR. GARDNER: Objection; mischaracterizes
4 the witness's testimony.

5 Q. BY MR. ACHARYA: Is that true?

6 A. Is what true?

7 Q. Is it true that you cannot say whether the
8 conduct in paragraph 13 would be acceptable or not
9 acceptable without the TRO?

10 A. There are other -- There may well be other
11 facts that would lead me to conclude that the
12 behavior was acceptable.

13 Q. So you can't say one way or another?

14 A. Correct.

15 Q. So after the TRO was issued, did you begin
16 doing anything more to help you identify what agents
17 are at a given location at a given date and time?

18 MR. GARDNER: Objection; vague.

19 Q. BY MR. ACHARYA: Do you understand the
20 question?

21 A. We did. We did. Are you talking about
22 specifically or just in response to the TRO?

23 Q. BY MR. ACHARYA: Yeah. I'm asking you if,
24 after the TRO, you tried harder to figure out what
25 agents are at places and times.

1 A. After the complaint about violations of
2 the TRO, we did -- we used a procedure that I
3 previously explained, where we, you know, compared
4 use of force reporting with --

5 Q. Yeah. I understand. That's after the
6 fact.

7 MR. GARDNER: Hey, wait. Counsel, you cut
8 the witness off. He was finishing his answer.

9 Please, Mr. -- Officer Russell, you had an
10 answer to finish. Please complete it.

11 THE WITNESS: Yes. I explained previously
12 that when we received complaints about violation of
13 the TRO, that we compared the -- you know, the
14 times, the dates, and locations included in those
15 complaints with our use of force reporting, to
16 determine if we needed to take, you know,
17 investigative or disciplinary action.

18 Q. BY MR. ACHARYA: Right. So I understand
19 that.

20 I am asking, sort of not retrospectively,
21 not based on the complaint, but prospectively, did
22 you do anything to make it easier to figure out in
23 the future who was where and when, so that you could
24 correlate an incident report with an officer?

25 A. That's kind of a hypothetical. I don't

1 really --

2 Q. No, it's not a hypothetical. I'm asking
3 what you did.

4 Did you do anything to make it easier to
5 figure out who did a thing that gets reported to
6 you?

7 A. We have the same -- We have the same
8 policies and procedures we had.

9 Q. Okay. Thank you. And so you've read the
10 declarations we submitted with the contempt motion?

11 A. I -- Yes.

12 Q. Yes. Did you impose discipline on any of
13 the agents involved in those cases?

14 A. I believe I've already answered this
15 question.

16 Q. I asked with respect to the TRO. This is
17 the contempt.

18 A. We have not -- We -- The specific
19 incidents have not been reported to us in a manner
20 that we've -- so far, that I'm aware of; and that's
21 possible -- but we have a secure portal site where
22 misconduct is reported, and it's possible that an
23 allegation of misconduct would have been submitted
24 in that portal site and I would not be made aware of
25 it, but I'm not aware of any disciplines.

1 MR. ACHARYA: Okay. I'm going to put
2 another declaration into the chat, and it's going to
3 be Exhibit 8.

4 (Exhibit 8 marked.)

5 Q. BY MR. ACHARYA: Tell me when you've got
6 it in front of you. And I'm looking at paragraph 9.

7 A. Okay. I'm looking at it.

8 Q. Have you read this declaration before
9 today?

10 A. I don't believe so.

11 Q. So you haven't watched this video that's
12 in paragraph 9?

13 A. I don't know.

14 Q. So if you look at -- Look at paragraphs 11
15 and 12. Tell me when you've finished reading those.
16 I'll read them into the record, actually.

17 "One federal agent walked along the fence,
18 spraying mace at protesters as though he were
19 watering a line of flowers. Me and three other
20 legal observers were recording. The protesters he
21 maced had not done anything to merit such treatment.
22 One may have touched the fence, but not in any kind
23 of threatening or violent way. This agent stopped
24 before he reached us. These events take place from
25 0:06 to 0:10 of the above video."

1 "Then" -- Next paragraph: "Then another
2 federal agent walked up with a can of mace, pointed
3 it at roughly head level, and casually pulled the
4 trigger, even though we were pointing to our
5 respective legal observer indicia and yelling that
6 we were legal observers. We were inundated with
7 mace. When he was done covering us in mace, he
8 stepped back into his formation. These events take
9 place from 0:13 to 0:20 of the above video."

10 That's what that says; is that right?

11 A. Yes.

12 Q. Yes. And you hadn't read that before
13 today?

14 A. No.

15 Q. Were you aware of this allegation of
16 improper use of force before today?

17 A. No.

18 Q. Okay. As a person in charge of TRO
19 compliance, do you think walking up to a group of
20 legal observers wearing ACLU vests and NLG hats,
21 whom a different agent has just been able to avoid
22 spraying, and specifically pepper spraying that
23 group, do you think that would violate the TRO?

24 A. I think --

25 MR. GARDNER: Objection -- Objection;

1 hypothetical. Objection; lack of foundation.

2 Objection; calls for a legal conclusion.

3 Q. BY MR. ACHARYA: It's not a hypothetical.

4 I'm talking about the events in paragraphs 11

5 and 12.

6 Do you think they would violate the TRO?

7 MR. GARDNER: Well, then objection, lack
8 of foundation.

9 Q. BY MR. ACHARYA: Do you know whether they
10 would violate the TRO?

11 MR. GARDNER: Same objection, and also
12 calls for a legal conclusion.

13 Q. BY MR. ACHARYA: Do you understand that
14 the TRO has something to say about paragraphs 11
15 and 12? Do you understand that the TRO is relevant
16 to those paragraphs?

17 MR. GARDNER: Same objection.

18 (Reporter request.)

19 THE WITNESS: Say that again.

20 (Reporter request.)

21 THE WITNESS: Okay. Can we get the last
22 question again.

23 Q. BY MR. ACHARYA: The last question is: Do
24 you understand that the TRO has something to say
25 about paragraphs 11 and 12, that the TRO is relevant

1 to those paragraphs?

2 A. I do.

3 MR. GARDNER: Same -- Same objections.

4 THE WITNESS: Okay.

5 Q. BY MR. ACHARYA: Do you understand whether
6 the TRO would permit or prohibit the events in
7 paragraphs 11 and 12?

8 MR. GARDNER: Same objections. Lack of
9 foundation, calls for a legal conclusion.

10 Q. BY MR. ACHARYA: Okay. You have to
11 answer.

12 A. That would depend on a full and thorough
13 investigation that would reveal all the facts in
14 this case, not just those represented in the
15 declaration.

16 Q. Okay. And you cannot say, sitting here
17 today, whether just those facts on their own would
18 or would not violate the TRO?

19 A. Correct.

20 MR. ACHARYA: I'm going to put a
21 declaration -- or, sorry -- I'm going to put an
22 e-mail into the chat.

23 This is going to be Exhibit 9, I believe.

24 THE REPORTER: Correct.

25 (Exhibit 9 marked.)

1 Q. BY MR. ACHARYA: And tell me when you have
2 it open.

3 A. This is the RD e-mail?

4 Q. Yes.

5 A. Okay. I have it open.

6 Q. So if you see in paragraph 5 -- I'll read
7 it into the record: "All our officers/agents on the
8 ground in Portland are familiar with the," quote,
9 "legal observer indicia noted in paragraph 5 of the
10 TRO, specifically the National Lawyers Guild issued
11 green hat and the ACLU issued blue vests." And it
12 says: "Officers/agents should exercise maximum
13 caution with regard to all such persons, absent a
14 strong need to make a valid arrest."

15 Now, going back to the previous exhibit:
16 Is it your understanding that walking up to a group
17 of legal observers wearing ACLU vests and NLG hats
18 and specifically pepper spraying them is exercising
19 maximum caution with regards to such persons?

20 MR. GARDNER: Objection; lack of
21 foundation.

22 THE WITNESS: So I'm -- I haven't actually
23 observed the video.

24 Q. BY MR. ACHARYA: Okay. But there are
25 facts in the -- the facts in the declaration. Can

1 you say based on those?

2 MR. GARDNER: Objection; lack of
3 foundation.

4 Q. BY MR. ACHARYA: Please answer.

5 A. I believe I've already answered this. I
6 think, you know, a full and thorough investigation
7 might reveal facts other than what's claimed in the
8 declaration.

9 Q. Okay. By the way, have you seen this
10 e-mail before?

11 A. I don't believe so. I don't --

12 Q. It wasn't forwarded to you?

13 A. I don't know. I don't recall. I don't
14 recall seeing this specific e-mail.

15 Q. Okay. Did you instruct your agents on the
16 ground in Portland to exercise maximum caution with
17 respect to legal observers and journalists?

18 A. Yes.

19 Q. Okay. Did you also restrict authority to
20 deploy crowd control devices such as CS gas
21 canisters to an appropriate supervisory level?
22 That's paragraph 9.

23 A. Let me read this whole thing. I don't
24 know who this -- Who is Richard Donoghue?

25 Q. He's someone -- you know, I'm honestly not

1 sure.

2 A. This is not someone who's in my chain of
3 command. I believe this person works for the
4 Department of Homeland Security. This is not an
5 e-mail that's familiar to me. And I haven't watched
6 the entire video, but when I -- at first glance, it
7 does not appear to depict people that work for me.

8 Q. Okay.

9 A. Let me read this. Hold on.

10 Q. It was sent to John Gountanis, by the way,
11 who's at DHS.

12 A. Okay.

13 Q. Are you familiar with John Gountanis?

14 A. I've heard of him. We received a verbal
15 instruction from Bill Williams, who's on -- who's on
16 this, who's one of the recipients of this e-mail.
17 Billy Williams is the U.S. attorney of the District
18 of Oregon, and we did receive a verbal instruction
19 from him that the -- I believe, if this is the
20 deputy attorney general, and I don't know -- I don't
21 know Mr. Richard Donoghue, but if that's the deputy
22 attorney general, it was relayed to me verbally that
23 the deputy attorney general's office, you know, was
24 emphasizing, you know, that the order needed to be
25 complied with. I don't recall seeing this actual --

1 Okay. Let's go to your declaration.

2 Let's go to 101-5, your July 29 declaration.

3 So I'm looking at paragraph 8. And this
4 is back to Exhibit 1, for the record. I'm looking
5 at paragraph 8 on page 2, mislabeled page 3.

6 It says you have personally observed the
7 following incidents while at the incident command
8 post or emergency operations center.

9 What is the incident command post?

10 A. Give me the paragraph again, please.

11 Q. Paragraph 8.

12 A. Paragraph 8. So the incident command post
13 refers to the federal command post, and the
14 emergency operations center refers to the -- you
15 know, a joint command post that was previously
16 operated by Portland Police Bureau before they
17 kicked the Feds out, basically.

18 Q. Understood. So I'm looking at
19 paragraph 8B.

20 And you said that you personally observed
21 all of the following incidents; is that right?

22 A. Observed on, yeah, video or other, you
23 know, social media.

24 Q. I see. So you didn't observe the actual
25 event take place?

1 A. I was watching -- yeah, typically watching
2 live video, or in some cases it's referring to
3 things that were -- we saw in claims that were made
4 on Twitter.

5 Q. Um-hum. So did you personally observe the
6 arrest of the man identified as Knudson?

7 A. I saw a video.

8 Q. You saw a video of it.

9 Did you -- Yeah, let's go on to 8C on the
10 next page. So this is about an individual on the
11 live stream video who identifies as Ari.

12 A. Yes.

13 Q. Did you personally observe this incident?

14 A. I watched the -- I watched the video.

15 Q. You watched the video. So you're familiar
16 with the video?

17 A. I am. I am familiar with the video. I
18 don't -- you know, I haven't memorized it, but I
19 have.

20 Q. Sure. Did you make it?

21 A. Did I make the video?

22 Q. Yeah.

23 A. No.

24 Q. No. You watched it?

25 A. Yes.

1 Q. Okay. Did you watch it before or after
2 July 17th?

3 A. I don't recall.

4 Q. You have no idea when you watched it?

5 A. I believe I watched it July 17th, but I --
6 I shouldn't -- I don't recall when I watched the
7 video.

8 Q. Okay.

9 A. I believe I watched it the day that it
10 happened.

11 Q. Okay. And who made this video?

12 A. I don't know. It's just an unidentified
13 user who was...

14 Q. Are you aware that it's a compilation of
15 videos?

16 MR. GARDNER: Objection; lack of
17 foundation.

18 Q. BY MR. ACHARYA: You've seen the video?

19 A. The specific -- The declaration is
20 referring to a specific time stamp where that
21 behavior occurs; not where that voice is heard, not
22 the other portions of the video.

23 Q. Yeah, no. It refers to a specific time
24 stamp, but it does refer to other portions of the
25 video too. It refers to a specific time stamp where

1 she says she has a bunch more press passes, but it
2 refers to earlier portions where she, I guess, is
3 encouraging violent opportunists to tamper with a
4 government owned security barricade, and also a
5 different portion where she's claiming to be a
6 member of the media organizations Halospace and GIA.

7 So you've watched -- Have you watched the
8 entire video?

9 A. I believe so.

10 Q. Okay. And are you aware that it's a
11 compilation of videos?

12 A. I -- I don't know. I don't --

13 Q. You are not aware of whether it is or is
14 not a compilation of videos?

15 A. Correct.

16 Q. Okay. Do you know how you came to watch
17 it rather than the original videos?

18 A. I don't know.

19 Q. Okay. Are you aware that the link in 8D,
20 the following paragraph where you said you observed
21 multiple live videos, is the -- that is the channel,
22 which is to say the collection of videos uploaded by
23 the same user that uploaded the video in
24 paragraph C?

25 A. I'm not aware of that, no.

1 MR. ACHARYA: You're not aware of that.

2 I'm going to put a PDF in the chat. This
3 is going to be Exhibit 10.

4 (Exhibit 10 marked.)

5 Q. BY MR. ACHARYA: Tell me when you've got
6 it open, please.

7 A. Okay.

8 Q. So this is the -- This is what shows up
9 when you go to the link in paragraph D.

10 Does this look familiar to you?

11 A. It does not look familiar to me, no.

12 Q. Okay. But you visited the link in
13 paragraph D, because it's in your declaration?

14 A. Yes.

15 Q. Okay. But this is the -- this is what's
16 at the link and it doesn't look familiar to you?

17 A. This is like a home page or something.
18 It's -- you know, I am familiar with YouTube. This
19 is a home page, obviously, where there are multiple
20 videos that have been posted. I don't -- This does
21 not --

22 Q. Right.

23 A. I may have visited it, but it does not --

24 Q. Do you -- Do you often go to Portland
25 Protesters Exposed?

1 A. No.

2 Q. Did you personally observe any of the
3 incidents in the videos available at that channel?

4 A. I don't know. I would have to --

5 Q. Okay. Because those are the incidents
6 that you refer to in paragraph D.

7 A. Sorry. Now I have a bunch of tabs and
8 stuff open. Sorry.

9 So in that video -- in paragraph D -- So,
10 generally, in the -- either in the incident command
11 post or the emergency operations center, there would
12 be people -- not people -- there would be live
13 stream aggregators, if you -- if you know what this
14 is. You know, basically there are, you know, these
15 channels where they're kind of importing and
16 collating multiple live streams. And I observed
17 that multiple -- when it says "multiple live videos"
18 of that incident in 8D, on multiple live streams I
19 observed that.

20 Q. Okay. Are you aware that the video in 8C
21 is not a live stream or a live stream aggregator?

22 A. I'm not aware of that, no.

23 Q. Okay. Paragraph 8E, you talk about MSNBC
24 reporter Sergio Olmos tweeting out video and
25 statements that he observed a person masquerading as

1 press to protect himself from federal officers.

2 Did you personally observe the underlying
3 incident?

4 A. I did not, but I observed the Twitter
5 post.

6 Q. You observed the Twitter post?

7 A. There's a -- Typically, there's -- I don't
8 know what you call it -- I think a social media
9 dashboard used very commonly in EOCs and incident
10 command posts called Tweet Deck --

11 Q. Right.

12 A. -- where you enter search terms and it
13 brings up, you know, I guess, you know, collections
14 of tweets that, you know, match whatever search
15 terms you've used.

16 Q. Sure. And the reason I'm asking you these
17 questions, by the way, is because I think you have
18 represented that you have been on the ground
19 sometimes at these protests.

20 A. Yes, that's correct.

21 Q. Yes. So I just want to make sure that --
22 which ones you did or did not personally observe.

23 So going on to 8F, the incident involving
24 Brandon Peape, wearing a black shirt with the word
25 "press" on the front and back, running toward the

1 security fence.

2 Did you personally observe that underlying
3 incident?

4 A. Let me go back to the -- Okay. I've got
5 all of these documents open now.

6 Q. Sure.

7 A. I don't -- I think I accidentally closed
8 out.

9 Q. I mean, I think you have this document in
10 paper in front of you, don't you?

11 A. I think I've got the other one. I've got
12 the other -- of my declaration paper.

13 Q. I see.

14 A. Where?

15 Q. Here, why don't I put it back in the chat.
16 This is Exhibit 1, the second time.

17 A. I can -- I can go to the document.

18 All right. We're in 8D?

19 Q. No, I'm looking at 8F now.

20 A. 8F.

21 Q. So it's a video posted by Mr. --

22 A. No, I observed this -- As I explained
23 earlier, I observed -- I saw this Twitter post; I
24 was not personally present while this -- when this
25 video was reported.

1 Q. Okay. But you're familiar with the video?

2 You watched it?

3 A. Yes.

4 Q. And it shows the man with the press shirt
5 running towards the fence?

6 A. Yes.

7 Q. So it shows him doing something illegal?

8 A. It shows him with a shield, it shows him
9 -- it shows behavior that appears to be cooperating
10 with these other people who were involved in
11 unlawful behavior.

12 Q. So it shows him with a shield?

13 A. It appears it shows him -- He appears to
14 be cooperating with these other individuals who are
15 engaged in unlawful behavior.

16 Q. Are you aware of Brandon Peape doing
17 anything illegal himself?

18 A. Not specifically.

19 Q. Okay. Is running towards the security
20 fence illegal?

21 A. Not on its own.

22 Q. Sure. How about 8G? Did you personally
23 observe this incident where a helmet with the word
24 "press" written on the back was participating in the
25 destruction of government property, to wit, the

1 security fence around the federal facility?

2 A. I -- I witnessed this video on Twitter. I
3 was not -- I was not personally present while this
4 occurred.

5 Q. You're familiar with the video because you
6 watched it?

7 A. Yes.

8 Q. So this person was participating in the
9 destruction of government property, so they were
10 doing something illegal?

11 A. It appeared to be participating in the
12 destruction of government property, yes.

13 Q. What were they doing?

14 A. Shielding the destruction of government
15 property from observation by federal officers.

16 Q. Oh, how were they shielding it?

17 A. With the use of umbrellas and surrounding
18 it so that it couldn't be observed.

19 Q. I see. Were they cutting the fence?

20 A. Not that I can see, no.

21 Q. Could you see in the video whether they
22 were recording video or taking photos?

23 A. Could I see in the video if they were
24 recording video or taking -- They were posting video
25 that they appeared to be taking, if that's what

1 you're asking. I don't...

2 Q. No, no. I'm not asking about the person
3 who took the video. I'm asking about the person in
4 the video with the word "press" written on the back
5 of the helmet.

6 Could you see if that person was taking
7 video or taking photos in the video?

8 A. Their hands are kind of obscured in front
9 of them. I don't know. I can't see it.

10 Q. Right. Do you know who posted the video?

11 A. The -- Let's get back to that one.

12 It's not a person that I knew personally,
13 but I believe it's a known, you know, media source
14 from --

15 Q. Right.

16 A. -- the Portland area.

17 Q. Mike Bivins, a freelance journalist?

18 A. Yes. Yes.

19 Q. It's good that press were there to take
20 that video; right?

21 A. Absolutely.

22 Q. Okay. And let's look at 8H real quick.

23 This is the individual wearing a helmet
24 with the word "press" written on the side, who had
25 crossed the barrier protecting the Hatfield

1 Courthouse and was calling on others to come join
2 him.

3 Did you personally observe this incident?

4 A. I observed that on video from the command
5 post.

6 Q. Okay. And do you know who made that
7 video?

8 A. There were -- We observed -- That video --
9 There were multiple live streams. He was in that --
10 He was in that area for an extended period of time.
11 So I don't know who made that particular video, but
12 there were multiple similar videos of that incident.

13 Q. So that -- that link in paragraph H goes
14 to a video posted by Andy Ngo.

15 Are you aware of that?

16 A. I am not.

17 Q. Okay. Do you watch a lot of --

18 A. And I see it here, yes.

19 Q. Do you watch a lot of Andy Ngo's videos?

20 A. He's a -- He's a known -- I watch no more
21 of Andy Ngo's videos than I do the other journalists
22 that cover Portland protests. He's a known
23 journalist that covers Portland protests.

24 Q. Okay. Is it illegal to hop the fence?

25 A. Yes. It's trespassing.

1 Q. And it's illegal if he's wearing a gorilla
2 suit?

3 A. I'm sorry? If he's what?

4 Q. It's illegal if he's wearing a gorilla
5 suit?

6 A. That's a hypothetical question. I don't
7 see how it relates to this.

8 Q. I'm just asking: Does the wearing of the
9 gorilla suit change that it's trespassing?

10 A. No.

11 Q. No. It's illegal if he's buck naked?

12 A. That's correct.

13 Q. And it's illegal if he's wearing a press
14 helmet?

15 A. That's correct.

16 Q. You'd have probable cause to believe that
17 he's committing a crime?

18 A. That's correct.

19 Q. You could arrest him?

20 A. That is correct.

21 Q. The press helmet wouldn't stop you from
22 arresting him?

23 A. That is correct.

24 Q. Was this person arrested?

25 A. I don't know the answer to that question.

1 Q. Was he charged?

2 A. I don't believe so, but I don't -- I don't
3 know the answer to that question. I don't have that
4 person's identity here with me.

5 Q. And just to be clear: When you said that
6 you personally observed the following incidents,
7 what you meant for 8B, C, D, E, F, G, and H was that
8 you personally watched the videos of those
9 incidents?

10 A. Either videos or Twitter posts. Correct.

11 Q. Videos that other people took?

12 A. Correct.

13 Q. Videos that other people may have edited?

14 A. I'm sorry? Say the last part again.

15 Q. Videos that other people may have edited.

16 MR. GARDNER: Objection; calls for
17 speculation.

18 THE WITNESS: That's correct.

19 Q. BY MR. ACHARYA: Videos that other people
20 did in fact edit, at least in the case of C?

21 MR. GARDNER: Objection; lack of
22 foundation.

23 Q. BY MR. ACHARYA: You've watched the video
24 in C?

25 A. Yes. I have no way of knowing that they

1 -- whether the videos were edited or not. That's
2 correct.

3 Q. Okay. And it has been your testimony
4 earlier in this deposition that videos often lack
5 context, leave out details, and that you are
6 uncomfortable evaluating situations for legality or
7 illegality without more details?

8 A. That's correct.

9 MR. GARDNER: Objection.

10 Q. BY MR. ACHARYA: Do you see any issues
11 with using tear gas at protests during a pandemic?

12 MR. GARDNER: Objection; vague.

13 Q. BY MR. ACHARYA: Does it concern you that
14 police, including federal police, are using tear gas
15 at protests during a pandemic?

16 A. Again, I don't have any specific, you
17 know, medical information to believe that tear gas
18 is or is not, you know -- the deployment of tear gas
19 would be different or not during a pandemic as
20 opposed to some other non-pandemic time.

21 Q. Okay. Do you agree that graffiti and
22 vandalism -- and I'm quoting you here -- are truly
23 minor crimes?

24 A. Where are you quoting me from?

25 Q. I'm quoting you from a podcast that you

1 REPORTER CERTIFICATE

2

3 I, MARILYNN HOOVER, CSR No. 04-0387 for the
4 State of Oregon, do hereby certify:

5 That prior to being examined, the witness named
6 in the foregoing deposition was duly sworn to
7 testify the truth, the whole truth, and nothing but
8 the truth;

9 That said deposition was taken down by me in
10 shorthand at the time and place therein named, and
11 thereafter reduced by me to typewritten form; and
12 that the same is a true, correct, and complete
13 transcript of the said proceedings.

14 Before completion of the deposition, review of
15 the transcript [X] was [] was not requested. If
16 requested, any changes made by the deponent (and
17 provided to the reporter) during the period allowed
18 shall be appended hereto.

19 I further certify that I am not interested in
20 the outcome of the action.

21 Witness my hand this 6th day of August 2020.

22

23

24

MARILYNN HOOVER, RPR

25

CSR No. 04-0387; Exp. 03/31/2023

EXHIBIT 2

FILED UNDER SEAL

EXHIBIT 3

FILED UNDER SEAL